

Waivers	First Name	Last Name	Claim Number
			W-20-0006
Amount	OGC Received Date	Assigned To	Assigned Date
\$11280.40	06/30/2020	Kenneth Redden	06/30/2020
EPA Decision	EPA Decision Date	Amount Approved	Status
APPROVED	07/06/2020	\$11280.40	CLOSED
Appeal	Comments		
No			
Type			
Debt Resulting from Overpayment of Salary			

Attachments

From: Redden, Kenneth

Sent: Monday, July 06, 2020 5:18 PM

To:

Cc: Sisson, Ann <Sisson.Ann@epa.gov>; May, Tonja <May.Tonja@epa.gov>; Stewart, Leonice <Stewart.Leonice@epa.gov>; OCFO-OGC-Waivers <OCFO-OGC-Waivers@epa.gov>; Chestnut, Donna <Chestnut.Donna@epa.gov>; Church, Stacey <Church.Stacey@epa.gov>; Lavergne, Dany <lavergne.dany@epa.gov>; Jennette, Vonda <Jennette.Vonda@epa.gov>
Subject: Waiver Decision (W-20-0006) Debt ID M2013500001

This email is in response to your timely "Waiver of Indebtedness Application" dated May 26, 2020 (W-20-0006) wherein you have requested approval of a waiver of debt in the amount of \$11,280.40. For the reasons set forth below, your request for a waiver is granted.

Background

Our records show that upon your June 30, 2013 hiring date with the EPA, you should have been placed in the Federal Employee Retirement System Revised Annuity Employees (FERS-RAE) retirement plan with a code of KR. However, unbeknownst to you, you were placed in regular FERS with a code of K. This resulted in a deduction of 0.8% from your paycheck instead of 3.1% from your paycheck.

On September 24, 2019, you received a telephone call and follow up email from Ms. Penny Thompson, HR Specialist in RTP, notifying you of the situation. After being notified of the error by Ms. Thompson, you periodically checked in with her on the situation until you received a Bill for Collection for DEBT ID M2013500001 in the amount of \$11,280.40 from the Interior Business Center (IBC) dated May 14, 2020.

You submitted a timely waiver application dated May 26, 2020 and, per the request of Ms. Leonice Stewart, followed up with additional information on 06/24/2020. In your waiver application, you state that collection would be against equity and good conscience because it was due to an administrative error that you were not aware of and had no control over.

Analysis

Under 5 U.S.C. § 5584, I have the authority to waive in whole or in part, a claim arising out of erroneous payments of compensation and allowances made to federal employees if collection would be against equity and good conscience and not in the best interests of the United States. "Such authority may not be exercised if there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim." B-231018 (Aug. 2, 1989).

Waiver is precluded if the employee is aware or should have been aware that they were being overpaid. B-271308 (April 18, 1996). An employee who has knowledge of a pay error or who should have been aware of a pay error is generally deemed to be at fault in those situations and should be prepared to repay the debt as it is not against equity and good conscience to collect. B-271308 (April 18, 1996) B-227322; (September 19, 1988); B-223508 (December 24, 1986). In the present case, I find that the erroneous reduced deductions were caused by Agency administrative error. Therefore, the only issue before me is whether you knew or should have known that you were placed in the wrong retirement plan.

My decisions and those of the Comptroller General stress the importance of employees monitoring their earning and leave statements (ELS) and other personnel documents which are provided to employees with the expectation that they will use them to verify their employment and pay status. It has long been held that the employee has the responsibility to verify the correctness of the payments he or she receives. If an employee does not monitor those documents, an employee is generally not free from fault and the resulting debt will not be waived. B-226465 (March 23, 1988). In determining whether an employee's actions are reasonable with regard to an overpayment, I may also examine such matters as the employee's position, knowledge, experience and length of service. B-222383 (Oct. 10, 1986).

Federal employees of ordinary experience and ability are expected to acquire a reasonable familiarity with civil service personnel principles and terminology, and they have a duty to examine employment records furnished to them and to ascertain whether the records are correct and if incorrect, take action to have them corrected. B-193831 (July 20, 1979).

While Federal employees are expected to be familiar with the Federal Employee Retirement System (FERS) generally, they are not expected to know that a new retirement system was introduced in 2013, with a similar name, FERS-RAE, which affected the rate of deduction, but did not otherwise change retirement eligibility or the annuity computation.

The record does not contain any evidence that you were an expert in federal retirement and pay systems, especially the establishment of appropriate retirement plans, their codes, and the effect it has on an employee's pay. I find no reason for you to have questioned the erroneous retirement code and deduction in the pay records available to you. I find that you reasonably relied on the Agency to place you in the correct retirement plan. B-211345 (July 21, 1983), B-184182 (July 22, 1976). Thus, I believe you had a reasonable basis to rely upon receipt of the money and it would be against equity and good conscience to collect the overpayments from your salary. See, B-235467 (Oct. 24, 1989), B 206385 (Dec. 6, 1982), B 182188 (Jan. 22, 1975).

Accordingly, all criteria for waiver of this claim have been met, and this request for waiver is approved in the amount of \$11,280.40. By copy of this email, I am advising OCFO to work with IBC to waive repayment and to refund to you any money that was already paid by you toward this debt.